

As already stated, I think that, in endeavouring to arrive at the proper import of the Act of 1882, attention should be given to the state of the law as it stood when the Act of 1858 was passed, and how it stood subsequently. I have shown that the provisions in the Constitution Act fixing and providing a salary for a Chief Justice, and for one other Judge, enabled all the provisions of the Act of 1858 to be satisfied as to these two appointments, but no more. In the same session of Parliament was passed an Act called "The Civil List Act, 1858," altering the appropriation in the 64th section of the Constitution Act, and the schedule thereto, by increasing the appropriation for the Chief Justice, and for one Puisne Judge, describing the office as the first Puisne Judge, and providing for one other Puisne Judge, describing the office as the second Puisne Judge.

It may be noted here that no importance is to be attached to the reservations of this Act and the *Civil List Acts of 1862 and 1863*. The reason was, that, as the Governor's salary was also altered by the same Acts, it was necessary by the Constitution Act they should be reserved. It is probable that the provisions in the Constitution Act and the Amendment Act, as to reserving Bills, were supposed to apply to Bills dealing with Judges' salaries, otherwise these provisions would have appeared in the Supreme Court Judges Act. This reading of the Constitution Act and the Constitution Act Amendment Act was erroneous. In 1873 the Governor's salary was separately dealt with by reserved Bills; but the Bill dealing with Judges' salaries was not reserved.

By this Civil List Act of 1858, then, provision was made for another judicial office, that of second Puisne Judge; and upon a person being appointed to that office all the provisions of "The Supreme Court Judges Act, 1858," could be satisfied as to the appointment: and I venture to think that, if this provision as to Judges' salaries had appeared in the Judges Act instead of the Civil List Act, as it well might, it would be beyond doubt that a limitation was effected by the provision.

It is unnecessary to consider whether, under the law as it then stood, the Crown could appoint at a salary less than the amount provided by "The Civil List Act, 1858." That Act has not, as the Act of 1873 has, a distinct provision that the amount granted for the judicial salaries shall be applied to the purposes for which granted.

It may be that under the Judges Act of 1858, and "The Civil List Act, 1858," a valid appointment could be made at any less sum than that granted. I am inclined to think otherwise. By this I mean, I think the appointee would have had a right to the sum in the schedule. For the provision in the Constitution Act was that the salaries there provided "*shall be the salaries*;" and "The Civil List Act, 1858," was really only intended to increase the amount, and to substitute a schedule in place of the schedule in the Constitution Act; and consequently the enactment in the 65th section of the Constitution Act remained—namely, that the Judges' salaries shall be those in the new schedule. Whichever view is taken, all the provisions of the Act of 1858 could be complied with—that is, even if a less salary were allotted by the Crown than the grant.

In 1862 was passed another alteration of the Civil List, appropriating *in globo* for Judges an increased amount. No doubt this was for the purpose of providing a salary for another Judge—a third Puisne Judge. And so in 1863 a similar Act was passed, the intention being, though not expressed in either Act, to provide for an additional Judge.

It may be that under or after each of these Acts, when the additional appointments were made, there was nothing in any Act giving the newly-appointed Judge a right to a salary of any particular amount; it may be that his right would be only to a continuance of payment of such sum within the appropriated amount as the Crown fixed: still, with regard to these additional appointments, all the provisions of the Judges Act of 1858 could be satisfied.

Then came the Civil List Amendment Act of 1873, which recognises the existence of five judicial offices in the Supreme Court, and provides that the lump sum previously granted *shall be applied* in the manner already pointed out. It is, in my opinion, a narrow view of this provision to read it as nothing more than an appropriation or grant to the Crown of the amount. The appropriation had been made before. This Act fixed and bound the destination of the amounts just as much as if contained in the Judges Act or Constitution Act, and is just as complete a fixing of the respective salaries as the Audit Act fixing the Auditor's salary, or Comptroller's Act, or Attorney-General's Act, or any other similar Act, such as the Surplus Revenues Appropriation Act, or as any English Act defining a salary to be paid to a Judge, the only difference being that in the present case the ascertained amount is made a charge on the Civil List.